

Division of Insurance v. Stacey L. Lew

MEMORANDUM AND ORDER OF DECISION

On April 30, 2003, the Division of Insurance filed an Order to Show Cause against Stacey L. Lew. The Division alleges in the Order to Show Cause that Lew forged a customer's signature while she was registered as a financial advisor by the National Association of Securities Dealers ("NASD"). The Division asserts that as a result of this misconduct, Lew has not maintained the qualifications of trustworthiness, competence, and suitability required of insurance agents under G.L. c. 175, §163, the licensing statute governing insurance agents at the time of her alleged acts. The Division seeks revocation of Lew's insurance licenses, underlying registration, and the right to renew. Pursuant to G.L. c. 175, § 194, the Division also seeks a \$500 fine for each violation of G.L. c. 175, § 163. The Commissioner of Insurance designated me as the presiding officer for this proceeding. Joseph Sullivan, Esq., represented the Division. Leonard Fisher, Esq., represented Lew.

I. Procedural History

A Notice of Procedure issued on May 12, 2003, scheduling a pre-hearing conference and hearing on the Order to Show Cause for June 20 and July 3, respectively. The Respondent's Answer to the Order to Show Cause was filed on May 29, 2003. The

newly enacted producer law, G.L. c. 175, §§ 162H through 162X, was briefly discussed at the pre-hearing conference. After the pre-hearing conference, the parties stipulated to certain facts and filed an Agreed Statement of Facts on July 15. The hearing scheduled for July 3 was continued and held on July 18. At the hearing, I directed the Division to file a Memorandum of Law addressing the applicability of G.L. c. 175, § 162R to the pending matter, and for Lew to file a Response Memorandum. On July 22, the Division filed its memorandum, and on July 29, Lew filed her Response Memorandum.

II. The Claim

The Division alleges in the Order to Show Cause that “Lew forged a customer’s signature on a Change of Financial Advisor Form, without that customer’s knowledge or consent.”¹ The Division states that as a result of the forgery Lew became the registered representative of record with respect to some or all of the customer’s mutual fund holdings. In her Answer to the Order to Show Cause, Lew “acknowledges and agrees” to all of the allegations in the Order to Show Cause. In addition, her answer offers the following explanation: “[Customer A] in nodding her head accepted [Lew] as agent of record to pursue [the customer’s] financial analysis...[Lew] was in error, made a mistake, is apologetic, suffered and abided by suspension since [May] 14, 2001....”

The parties stipulated in their Joint Statement of Agreed Facts to the occurrence of certain events, as chronicled below.

On October 14, 1999, Lew was first licensed by the Division as an insurance agent under G.L. c. 175, §163. She was appointed as an insurance agent for IDS Life Insurance Company on October 14, 1999, and her appointment was canceled on June 30, 2001.

On May 12, 2000, while Lew was registered as a financial advisor by NASD and employed by American Express Financial Advisors, Inc. (“AEFA”), she met with Customer A for the purpose of discussing the customer’s financial planning and

¹ The subject Change of Financial Advisor Form for Putnam Investments allows an account holder to change the name of the individual who acts as the financial advisor of record for any account listed on the form.

“marketing” AEFA products. During the meeting, Lew and Customer A discussed the possibility of Lew “taking over” Customer A’s accounts with Putnam Investments. Customer A purchased a Roth IRA and a disability income protection plan at the time of the meeting.²

On May 15, 2000, Lew sent certain forms to Customer A by facsimile, including a form which would change the designated financial advisor of record for the customer’s Putnam Investment account from another advisor to Lew. However, Customer A did not sign any form which would have appointed Lew as the financial advisor of record for the Putnam Investment account, or for any other account.

On or about July 11, 2000, Customer A contacted the Field Compliance Director for AEFA, to complain that Lew had become the financial advisor of record on Customer A’s Putnam Investment accounts, without the customer’s authorization. On July 12, 2000, Lew’s supervisor confronted Lew about the allegation she had forged the customer’s signature to the change of advisor form. Lew initially denied the allegation, but on July 13, 2000, she approached her supervisor and stated that she had signed Customer A’s signature on the change of advisor form without the customer’s authorization.

On or around July 2000, Lew was terminated by AEFA because she had signed Customer A’s name without the customer’s authorization. The parties agree that the NASD Uniform Termination Notice for Securities Industry Registration (“Uniform Termination Notice”), dated August 16, 2000, states Lew was “terminated for cause, as she admitted she signed the client’s name on the document.” *See* Uniform Termination Notice, Exhibit C. In addition, the parties agree that Lew, on February 5, 2000, accepted and consented to the entry of findings at the NASD that she forged Customer A’s signature on a Change of Financial Advisor Form.³ *See* Letter of Acceptance, Waiver, and Consent with the NASD, Exhibit A3. The Letter of Acceptance, Waiver, and Consent with the NASD (“Letter of Acceptance”) states Lew submitted the form to an

² The parties agree that both products were later canceled by Customer A when the customer filed a complaint with AEFA against Lew.

³ Lew accepted and consented to the entry of findings at the NASD without admitting or denying the alleged violation.

investment company and became the registered representative of record with respect to some of the customer's mutual fund holdings. The Letter of Acceptance also provides for Lew's suspension from NASD for one year and her payment of a \$5,000 fine prior to being reinstated.

In addition, the Division filed a copy of the Facts and Evidence Summary prepared by a special investigator for the Division, Exhibit A; a NASD Disciplinary Actions Report, Exhibit A2; Correspondence from the NASD to the Division, Exhibit A3; and Materials from AEFA, including the change of advisor form at issue and the complaint letter from Customer A.⁴ Exhibit B. The Division also filed a copy of the Consolidated Licensing and Regulation Information System ("CLARIS") computer print-out of the Division's records, which shows Lew has no active company appointments at this time, and her last appointment as an insurance agent with IDS Life Insurance Company was cancelled effective June 30, 2001. Exhibit A1.

III. The Parties' Arguments

A. The Division

The Division asserts that as a result of her conduct, Lew has not maintained the statutory standards necessary for an insurance license. It argues that Lew's right to renew her insurance license should be revoked because she fails to maintain the standards of suitability and trustworthiness required by G.L. c. 175, § 163, the licensing statute governing her conduct at the time of the incident. In addition, the Division argues, Lew's conduct is cause for the Commissioner to revoke or refuse to issue or renew Lew's insurance license under G.L. c. 175, § 162R(a)(8), a section of the producer law. Specifically, G.L. c. 175, § 162R(a)(8) states that "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere" is conduct which justifies the Commissioner to revoke, refuse to issue, or renew a producer license. In addition, the

⁴ Customer A's letter to AEFA, dated July 15, 2000, states, in pertinent part, "On Monday, May 15, [Lew] faxed me the Putnam Investments Change of Financial Advisor Form . . . I did not sign any of these forms. At some point upon not receiving the forms back from me, [Lew] left me a message inquiring about their status. I voice mailed her back saying that I was not transferring any of the accounts over. . . . She never had permission to sign my name. This was forgery."

Division asserts that because Lew's conduct is a "dishonest practice" under G.L. c. 175, § 162R(a)(8), it also violates G.L. c. 175, § 162R(a)(2).⁵

B. Stacey L. Lew

Lew argues that "an error of judgment was made" but she "meant no harm, received no benefits, and no money, funds, or financial consideration was involved." Lew Response Memorandum at 1. Lew states that she had been working as a financial advisor for approximately ten months, was inexperienced, and was eager to show progress. She asserts that she and Customer A discussed AEFA becoming the holder of her accounts, and "nodded consent was implied." Lew July 11 Clarification Letter. Lew states that she forgot to have Customer A sign the change of advisor form at their meeting and sent the form by facsimile. Lew concedes that after she was unable to reach Customer A by telephone, she "mistakenly" signed the customer's name to the form. Lew July 11 Clarification Letter.

Lew stated at the hearing that her conduct was against her better judgment, but she believed at the time that she had "implied permission," and that it was a harmless transaction to change advisors. Lew also stated that she received no benefit from the mere act of holding Customer A's Putnam Investment accounts, but agreed that certain transactions could lead to a commission. She also acknowledged that she neglected to think about the existing advisor's loss of commission.

Lew asserts that she is now trustworthy and competent. In addition, she argues that this was not an "insurance violation, per se, or a *financial transaction*." Lew Response Memorandum at 2 (emphasis added). Further she argues that she has already been penalized for her mistake by a one year suspension from the NASD and a \$5,000 fine, and for the Division to revoke her insurance license or assess an additional penalty would be "excessive . . . and like double jeopardy." *Id.* She asserts that she has been unemployed, and requests to be allowed to have a valid insurance license. She "swears that she will be prudent, careful, trustworthy and honest and will abide by all Rules, Regulations, and Laws of the Regulatory bodies, the Commonwealth, and interest of the Customer." Lew Answer at 2.

⁵ G.L. c. 175, § 162R(a)(2) states, *inter alia*, that "violating any insurance law..." is cause to revoke, or refuse to issue, or renew, a producer license.

IV. Discussion

Lew states that she mistakenly signed Customer A's name on a Change of Financial Advisor Form while she was acting as a NASD registered financial advisor. Before Lew signed the customer's name, she sent the customer the form by facsimile, and then she attempted to reach the customer by telephone. It was, as Lew states, a serious "error of judgment" to sign the customer's name on the form when the customer failed to return the required forms, and had not yet communicated back to Lew about the forms. Because Lew did not have implied permission to sign Customer's A name on the form, I need not reach the issue of whether Lew ever received express communication from Customer A that she would not be changing financial advisors. Lew's conduct allowed her to become the registered representative of record with respect to Customer A's mutual fund holdings, without the customer's authorization. Lew's actions, therefore, breached her customer's trust, as well as the trust of her business employer. In addition, Lew's action had the potential to harm Customer A's existing financial advisor, who would have lost his designation as Customer A's advisor of record for that account. Further, contrary to Lew's assertions, I find that Lew would have benefited personally from her actions. As Customer A's financial advisor, Lew might have received commissions, or other benefits attendant to that designation. At a minimum, Lew would have benefited by gaining a new account to oversee. Inexperience or a zeal to acquire new accounts does not excuse her behavior. Customer A did not authorize the change of her financial advisor.

Lew's actions reflect upon her fitness to act as an insurance producer. The right to sell, solicit, or negotiate insurance as a licensed insurance producer is a privilege conferred by the Commissioner only upon those who demonstrate a fitness to carry out such duties. *See* G.L. c. 175, §§ 162G through 162X (qualifications and procedures for the licensing of insurance producers.) Both the former licensing statute for insurance agents, G.L. c. 175, § 163, and the current producer law, G.L. c. 175, § 162R(a)(8) address, *inter alia*, the need for an insurance licensee to be trustworthy. This requirement is meant to prevent conduct by an insurance licensee which would be hazardous to the

consumer. *See Deluty v. Commissioner of Insurance*, 7 Mass. App. Ct. 88, 90 (1979). Lew demonstrated a lack of trustworthiness in business when she signed her customer's name on the change of advisor form. Thus, she fails to meet the qualifications of suitability and trustworthiness required of all insurance agents under G.L. c. 175, § 163. In addition, it demonstrates untrustworthiness in business, under the current licensing law, G.L. c. 175, §162R (a)(2) and (8). *See Arthurs v. Board of Registration in Medicine*, 383 Mass. 299, 314 -315 (1981) (laws governing licensing disciplinary proceedings may be retrospective insofar as it determines from the past conduct of the party his fitness for the proposed business.)

Accordingly, I find the Commissioner has cause to revoke any Massachusetts insurance license Lew has for the remainder of its term. However, because Lew's conduct did not specifically involve an insurance transaction, and the NASD has already assessed a fine for this conduct, I decline to assess a fine.

ORDER

Accordingly, after due notice, hearing and consideration it is

ORDERED: that pursuant to the authority granted in G. L. c. 175 §162R, any and all insurance licenses issued to Stacey L. Lew by the Division of Insurance are hereby revoked, and she shall return to the Division any licenses in her possession, custody or control; and it is

FURTHER ORDERED: that pursuant to the authority granted in G.L. c. 175, §166B, Stacey L. Lew shall dispose of any interest as proprietor, partner, stockholder, officer or employee of any licensed producer; and it is

FURTHER ORDERED: that pursuant to the authority granted in G.L. c. 175, §166B, Stacey L. Lew is from the date of this order prohibited from transacting any insurance producer business or accepting employment in any insurance producer business in the Commonwealth of Massachusetts, without prior approval of the Commissioner, whether such interest or employment is as a manager, owner, partner, stockholder, officer, director, or employee.

This decision has been filed on this day in the office of the Commissioner of Insurance.

Date: 3/3/04

/s/
Susan H. Unger
Presiding Officer

Pursuant to G.L. c. 26, §7, this decision may be appealed to the Commissioner of Insurance.